may also be broken by an honest and *bona fide* offer on the part of the deserter to return and renew the marriage relation, which offer is refused by the deserted spouse. *Albee* v. *Albee,* 141 Ill. 550, 31 N. E. 153; *McGowan* v. *McGowan* (Tex. Civ. App.), 50 S. W. 399. Or it may be broken by the deserted spouse filing a bill for divorce. See *Ford* v. *Ford, supra.*

The particular point as to whether or not the filing of a libel for divorce within the statutory period operates as consent to the desertion has never arisen in Virginia. The Virginia law, which is in line with the weight of authority in regard to desertion, is discussed in *Bailey* v. *Bailey,* 21 Gratt. (Va.) 43; *Latham* v. *Latham, supra;* and *Washington* v. *Washington,* 111 Va. 524, 69 S. E. 322.

For a discussion of insanity as a bar to a suit for divorce on ground of desertion, see 6 VA. LAW REV. 133.

DIVORCE—INFANTS—APPOINTMENT OF GUARDIAN AD LITEM FOR INFANT DEFENDANT UNNECESSARY.—An infant wife brought suit for divorce and alimony. Service was made upon the defendant in person. When it developed, during the hearing in the lower court, that the defendant was an infant, his counsel moved to suspend the hearing and appoint a guardian *ad litem* to represent the interests of the minor defendant. This motion was overruled, and an order was passed requiring the payment of temporary alimony and attorneys' fees. *Held,* the judgment is affirmed. *Bentley* v. *Bentley* (Ga.), 102 S. E. 21.

It is well settled that when a judgment or decree against an infant defendant is assailed on error or on appeal, the record must show affirmatively that the infant was brought before the court according to the precise mode prescribed by statutes and rules of practice, and that a guardian *ad litem* was appointed to represent and defend him. Otherwise such judgment or decree cannot be sustained. *Woods* v. *Montevallo Coal, etc., Co.,* 107 Ala. 364, 18 South. 108; *Stinson* v. *Pickering,* 70 Me. 273; *McDonald* v. *McDonald,* 3 W. Va. 676. In every criminal prosecution, action at law, suit in equity or special proceeding in which an infant is defendant, it is the duty of the court to appoint, for him, a guardian *ad litem;* and until that is done the infant defendant cannot make a legal defense nor can any steps in the action be taken against him. See *Peak* v. *Shasted,* 21 Ill. 137, 74 Am. Dec. 83; *Thurston* v. *Tubbs,* 250 Ill. 540, Ann. Cas. 1912B, 375, and note; *Roberts* v. *Stanton,* 2 Munf. (Va.) 129, 5 Am. Dec. 463; *Weaver* v. *Glenn,* 104 Va. 443, 51 S. E. 835.

In New York it is well settled that an infant defendant, in a suit for divorce or annulment, must be represented by a guardian *ad litem* as in other cases. *Wood* v. *Wood,* 2 Paige Ch. (N. Y.) 107; *Fishbein* v. *Fishbein,* 179 App. Div. 883, 165 N. Y. Supp. 936. And even an infant plaintiff suing for divorce must have a guardian *ad litem* appointed to represent her. *Anderson* v. *Anderson,* 164 App. Div. 812, 150 N. Y. Supp. 359.

There are some authorities which hold that an infant can prosecute a suit for divorce without being represented by a next friend. *Jones*

v. *Jones,* 18 Me. 308, 36 Am. Dec. 723; *Snedager* v. *Kincaid,* 22 Ky. Law Rep. 1347, 60 S. W. 522. This latter case was based largely upon a statutory provision. It has been held that where the nullity charged against the marriage is relative and not absolute, the contracting parties retain their status as married persons until such nullity is ascertained and declared by a competent court. And a female minor, emancipated by such marriage, does not need a guardian *ad ltem* to enable her to defend such suit. *Delpit* v. *Young,* 51 La. Ann. 923, 25 South. 547.

MASTER AND SERVANT—AUTOMOBILES—HUSBAND LIABLE FOR NEGLIGENT OPERATION OF HIS AUTOMOBILE BY THIRD PERSON DIRECTED OR PERMITTED BY WIFE.—The defendant kept an automobile for the use and pleasure of his family. During the course of a pleasure drive, the defendant's wife, without the knowledge or consent of the husband, permitted a friend to drive the car. Because of this friend's negligent driving, the plaintiff's property was damaged, and the plaintiff brought an action for damages. *Held,* the defendant is liable. *Ulman* v. *Lindeman* (N. D.), 176 N. W. 25.

The liability of the owner of an automobile for the negligence of those who drive it must depend upon the relation of agency or of master and servant. See *Doran* v. *Thomsen,* 76 N. J. L. 754, 71 Atl. 296. The fact of the ownership, standing alone, will not fix liability, though it has been held that the fact of ownership raises a *prima facie* presumption that the driver was acting for the owner. *Birch* v. *Abercrombie,* 74 Wash. 486, 133 Pac. 1020. The attempt to fix liability upon the owner on the ground that an automobile is a "dangerous agency" has been generally rejected. *Cohen* v. *Meador,* 119 Va 429, 89 S. E. 876; *Brinkman* v. *Zuckerman,* 192 Mich. 624, 159 N. W. 316. See also note L. R. A. 1917F, 384. As between the owner of a family automobile and the members of the family, the modern tendency is to fix the relation of master and servant. For a full discussion of the principles and authorities involved, see 2 VA. LAW REV. 189.

The instant case involves a unique point. Here the owner was held liable, not for the negligence of his wife, but for that of one whom she permitted to drive without his knowledge or consent. The court held the operation to be that of the wife through her friend as a mere instrumentality. Only one analogous case can be found. In *Houseman* v. *Karicofe* (Mich.), 167 N. W. 964, the joint owners of an automobile were held liable for the negligence of one who was driving the car for their son, a paralytic. But there was evidence that the parents planned the trip and themselves appointed the driver.

Whether the "family automobile doctrine" is a legitimate extension of the doctrine of *respondeat superior* is open to serious question. *Schumer* v. *Register,* 12 Ga. App. 743, 78 S. E. 731; *Linville* v. *Nissen,* 162 N. C. 95, 77 S. E. 1096; 2 VA. LAW REV. 203. At any rate, it would seem that its application to the instant case stretches the doctrine perilously near the breaking point.